BASILLE JACKSON

IBLA 75-255 Decided June 18, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native Allotment application AA-8204.

Affirmed as modified.

1. Alaska: Native Allotments -- Patents of Public Lands: Effect -- Patents of Public Lands: Suits to Cancel

   Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

APPEARANCES: Bruce C. Twomley, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Basille Jackson has appealed to this Board from a decision of November 1, 1974, by the Alaska State Office, Bureau of Land Management (BLM), which rejected his Native Allotment application and evidence of occupancy under the Act of May 17, 1906, 43 U.S.C. § 270-1 (1970), on the grounds that he had not satisfactorily shown that he had made substantially continuous use and occupancy of the land for a period of five years to the potential exclusion of use by others, citing 43 CFR 2561.0-5(a) and (b).

In transmitting the subject case record with the appeal to the Board, BLM indicated that the lands in question were patented November 15, 1974, under patent number 50-75-0103. The patent was issued to one George M. Goble for homestead entry AA-966.

[1] Although not mentioned in the decision below as it occurred subsequent to the date of the decision, the issuance of the patent

to Goble covering the lands involved superimposed another reason for rejection of appellant's allotment because upon its issuance the Department lost jurisdiction over the land. The effect of the issuance of a patent, even by mistake or inadvertence, is to remove from the jurisdiction of this Department the determination of questions concerning rights to land. Ethel Aguilar, 15 IBLA 30 (1974); Clarence March, 3 IBLA 261 (1971); Everett Elvin Tibbets, 61 I.D. 397 (1954). Therefore, appellant's Native Allotment application must be rejected.

Appellant contends that BLM erred in its decision that he failed to satisfy use and occupancy requirements under the Native Allotment Act, and requests that the decision be reversed and the case remanded to BLM with instructions to determine that but for the conflicting homestead patent he would be entitled to his Native Allotment.

We are not inclined to rule on this question other than to point out that, in our opinion, the appellant has not made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years (43 CFR 2561.2), and prior to December 18, 1971, the date on which the Alaska Native Allotment Act was repealed by section 18 of the Alaska Native Claims Settlement Act, 85 Stat. 710, 43 U.S.C. § 1617 (Supp. III, 1973). See Memorandum of October 18, 1973, to the Director, Bureau of Land Management, from the Assistant Secretary, Land and Water Resources, Subject: Adjudication of Pending Alaska Native Allotment Applications. In fact, the present evidence militates against appellant. In March, supra, we said (and quoted in Aguilar, supra):

> We decline to rule on appellant's request that this Board recommend institution of suit for cancellation of the State's patent. Rather, we order the case record returned to the Bureau of Land Management and suggest that the Bureau, the appellant and the Bureau of Indian Affairs, if they so desire, take the matter up with the Office of the Solicitor, the Department's office in charge of litigation matters. [3 IBLA at 264]

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as herein modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge